

ESTTA Tracking number: **ESTTA563673**

Filing date: **10/08/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	FAIRMONT HOLDINGS, INC.		
Entity	Corporation	Citizenship	Florida
Address	3700 S.W. 30th Ave. Hollywood, FL 33312 UNITED STATES		
Attorney information	Kim Kolback Law Offices Of Kimberly Kolback 1395 Brickell Ave., Suite 800 Miami, FL 33131 UNITED STATES kim@kkolbacklaw.com Phone:305 858 2627		

Applicant Information

Application No	85859951	Publication date	09/10/2013
Opposition Filing Date	10/08/2013	Opposition Period Ends	10/10/2013
International Registration No.	NONE	International Registration Date	NONE
Applicant	Bacardi & Company Limited Aeulestrasse 5 Vaduz, 9490 LIECHTENSTEIN		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: Alcoholic beverages except beers

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
Other	Opposer will be damaged if Applicant is granted registration of the Opposed Mark because the registration and/or use of the Opposed Mark by Applicant in connection with Applicant's goods will give color and exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4222657	Application Date	03/18/2011
Registration Date	10/09/2012	Foreign Priority Date	NONE
Word Mark	LIVE TRUE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2012/06/01 First Use In Commerce: 2012/06/01 Wine Class 034. First use: First Use: 2011/03/15 First Use In Commerce: 2011/03/15 Cigars, cigar boxes, cigar cutters and cigar tubes		

U.S. Application No.		Application Date	
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services			

Attachments	opposition.pdf(45481 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/s/Kim Kolback/
Name	Kim Kolback
Date	10/08/2013

**IN THE UNITED STATES PATENT AND TRADEMARK
OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

FAIRMONT HOLDINGS, INC.,
a Florida Corporation,

Opposer,
vs.

Opposition No. _____
Application Serial No.: 85859951
Word Mark: DEWAR'S LIVE TRUE

BACARDI & COMPANY LIMITED,
a Liechtenstein Company,

Applicant.
_____ /

NOTICE OF OPPOSITION

Opposer, FAIRMONT HOLDINGS, INC., a Florida Corporation, by and through its undersigned counsel, hereby files this Notice of Opposition to U.S. Trademark Application Serial Number 85859951. In support, Opposer states:

1. Opposer is the owner of Registration Serial Number 4222657 and Application Serial Number 86085164 for the trademarks LIVE TRUE in international classes 033, 034 and 035 for: cigars and related cigar products; wine; on-line retail store services featuring cigars, wine and related products; retail store services featuring cigars, wine and related products; and, retail stores featuring cigars, wine and related products. Opposer also owns extensive common law rights in the LIVE TRUE trademarks with respect to these and other products and services.

2. Since early 2012, Opposer has continuously used, advertised, promoted and offered to the public through various channels of trade and commerce, its products and services bearing the LIVE TRUE trademark, alone, or in combination with other words.

3. During this time, Opposer has made a substantial investment in developing, advertising and marketing its products, services and goodwill in relation to Opposer's LIVE TRUE trademarks.

4. Opposer's customers and the public in general have come to know and recognize Opposer's LIVE TRUE products and services, and to associate these marks with Opposer and the products and services offered by Opposer.

5. Opposer has been expanding and intends to continue to expand its products and services displaying the LIVE TRUE marks to include new products and services.

6. On or about March 1, 2013, Applicant, BACARDI & COMPANY LIMITED, a Liechtenstein Company, filed U.S. Trademark Application Serial Number 85859951 seeking to register, pursuant to Section 66(a) of the U.S. Trademark Act, DEWAR'S LIVE TRUE in international class 033 for alcoholic beverages, except beers (the "Opposed Mark").¹

7. On July 29, 2013, the United States Patent And Trademark Office ("USPTO") approved the Opposed Mark for publication and the Opposed Mark was published for opposition in the *Official Gazette* on September 10, 2013.

8. Opposer will be damaged if Applicant is granted registration of the Opposed Mark because the registration and/or use of the Opposed Mark by Applicant in connection with Applicant's goods:

- A. is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association between Opposer and Applicant;
- B. will dilute Opposer's trademarks; and/or,
- C. will give color and exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

¹On September 13, 2013, BACARDI & COMPANY LIMITED also filed U.S. Trademark Application Serial Number 79135543 seeking to register, pursuant to Section 66(a) of the U.S. Trademark Act, LIVE TRUE (without the DEWAR's moniker) in international class 033 for alcoholic beverages, except beers – indicating a clear intent to use LIVE TRUE, without the DEWAR's moniker, in the United States market.

WHEREFORE, Opposer prays that this Opposition be sustained and that registration to Application Serial Number 85859951 be refused.

Fairmont Holdings, Inc. submits herewith the requisite filing fee in the amount of \$300 in conjunction with the filing of this Notice Of Opposition.

Dated: October 8, 2013.

Respectfully submitted,
Law Offices Of Kimberly Kolback
Attorney for Opposer
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By: /s/ Kim Kolback
KIMBERLY KOLBACK